

United States Bankruptcy Court

For the NORTHERN District of IOWA
IOWA STEEL EXPRESS, INC.,

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

Debtor.

MICHAEL C. DUNBAR, TRUSTEE,

Case No. L-89-01410C

JUN 25 1991

Plaintiff

v.

STRICK LEASE, INC.,

Defendant

BARBARA A. EVERLY, CLERK

Adversary Proceeding No. L-90-0183C

JUDGMENT

- ☒ This proceeding having come on for trial or hearing before the court, the Honorable
MICHAEL J. MELLOY, United States Bankruptcy Judge, presiding, and
the issues having been duly tried or heard and a decision having been rendered.

[OR]

- ☐ The issues of this proceeding having been duly considered by the Honorable
MICHAEL J. MELLOY, United States Bankruptcy Judge, and a decision
having been reached without trial or hearing.

IT IS ORDERED AND ADJUDGED: trustee's complaint to set aside a preferential transfer
as to the payment of \$9,706.30 made in June, 1989, is denied.

IS IS FURTHER ADJUDGED the trustee's complaint to set aside as a preferential transfer
the \$9,706.30 transfer made on July 20, 1989, is granted. Judgment is entered in favor
of the trustee, Michael C. Dunbar, and against the defendant, Strick Lease, Inc., in the
sum of \$9,706.30, plus interest at the rate of 10% per annum from the date of the filing
of this complaint to entry of judgment. Interest shall accrue from and after the entry
of judgment at the federal judgment rate of 6.09%.



BARBARA A. EVERLY

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: 6-25-91

By: Anita Wolral
Deputy Clerk

Handwritten signature and date: 6/25/91

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

JUN 25 1991

BARBARA A. EVERLY, CLERK

IN RE:

Chapter 7
BANKRUPTCY NO.

IOWA STEEL EXPRESS, INC.,

L-89-01410C

Debtor.

MICHAEL C. DUNBAR, Trustee,

ADVERSARY NO.

Plaintiff,

L-90-0183C

v.

STRICK LEASE, INC.,

Defendant.

**Ruling Re: Trustee's Complaint Seeking
Turn Over of Preferential Transfers**

This matter is before the court on the trustee's complaint seeking to avoid transfers made by the debtor, Iowa Steel Express, Inc. ("debtor") to Strick Lease, Inc. ("Strick Lease") in the 90 days prior to bankruptcy. Specifically, the trustee seeks to turn over from Strick Lease of two different payments made by debtor to Strick Lease which total \$9,706.30 during that period. The trustee contends that these transfers were voidable preferences pursuant to 11 U.S.C. § 547(b).¹ Strick Lease contends that these payments were made in the ordinary course of business and, therefore, under § 547(c)(2) are not preferences. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F). The following opinion denying the trustee's complaint in part and granting the trustee's complaint in part, constitutes this Court's findings of fact, conclusions of law, and order pursuant to Fed.R.Bankr.P. 7052.

¹All statutory references are to Title 11 of the United States Code unless otherwise specified.

PROPOSED FINDINGS OF FACT

1. Strick Lease, Inc. ("Strick") leased truck trailers to Iowa Steel. The parties stipulated that Strick retained title to the trailers at all times material to this dispute.

2. This preference complaint relates to two payments which were made on or about June 23, 1989, and July 20, 1989. Each payment was in the amount of \$9,706.30. The June 23, 1989 payment was for the invoice dated March 24, 1989. The July 20, 1989 payment was for the invoice dated April 28, 1989.

3. The relationship between the parties commenced in March, 1987. The first invoice is dated April 24, 1987. From April, 1987, to approximately July, 1988, invoices were usually paid within 30 days from the date of the invoice. From July, 1988, to December, 1988, the time for payment lengthened to approximately 60 days from date of invoice. From January, 1989, to July, 1989, when the last invoice was paid on July 20, 1989, the time from date of invoice to date of payment was approximately 90 days.

4. During calendar year 1989, the debtor was experiencing increasingly severe financial difficulties. These difficulties resulted in delays in payment to all creditors. Most creditors were pressing the debtor for payment and negotiations were conducted with a number of creditors concerning outstanding bills. Strick Lease was one of the creditors with whom negotiations were held. Eventually, an agreement was reached with Strick to begin making payments on a more timely basis. That agreement required the debtor to begin making payments after July 1st at the rate of

one payment every eleven days. Each payment would be approximately one-half of a normal monthly payment. This would have the effect of making approximately one and one-half month's payments each month, so that within a four or five month period of time the back payments would be brought relatively current. However, that agreement was not complied with and the only payment made in July was made on July 20, 1989, which was the full monthly payment for the invoice dated April 28, 1989.

5. Although there is no specific evidence presented on the elements of a preference as set forth in § 547 of the Bankruptcy Code, there does not appear to be any serious question that all of the elements of a preference as set forth in § 547(b) have been met. Specifically, the Court finds as follows:

- a. The payment was to a creditor, Strick Lease.
- b. Payment was on account of a debt owed by the debtor before the payment was made.
- c. There was no evidence to rebut the presumption of insolvency provided for in § 547(f). The testimony of Roger Larson also shows that the checking account was overdrawn by \$175,000 at all relevant times. Consequently, the Court finds that the debtor was insolvent.
- d. The evidence shows that the two payments in question were made by checks dated June 23, 1989 (trustee exhibit 2) and July 20, 1989 (trustee exhibit 3). Both of those payments were made within 90 days of the date of filing which occurred on September 18, 1989.

e. There was no specific evidence provided that the creditor received more than it would have received if the case were a case under Chapter 7 of the title or the transfer had not been made. However, a review of the court file does show that there are minimal assets available for distribution to creditors and there have been substantial claims filed in this case. Therefore, if the debtors still had the money in its account, which is represented by these two payments totalling \$19,412.60, the dividend to unsecured creditors would be fairly small. This creditor's pro rata share of any dividend, as an unsecured creditor, would be significantly less than the two payments at issue.

Conclusions of Law

The only defense of Strick Lease in this proceeding is that the payments made by the debtor to Strick Lease in June and July were within the ordinary course of dealings between the two parties and, therefore, under § 547(c)(2) are not avoidable as preferences. The trustee argues that the payments were not in the ordinary course of business because they were not made within the 30 day repayment period, from invoice to payment, in the contract. The trustee points out that the June payment was made after 96 days and the July payment after 84 days. The trustee argues that the ordinary repayment time was the 30 day contractual period, and since these payments in question were made outside that 30 day period, they were not in the ordinary course of business. Strick Lease contends that the payments were made in the ordinary course

of business because it had become the ordinary course of business that Strick Lease would accept late payments from the debtor.

This dispute will be governed by § 547(c)(2). That section provides: The trustee may not avoid under this section --

to the extent that such transfer was --

(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(C) made according to ordinary business terms.

The trustee acknowledges that § 547(c)(2)(A) has been satisfied in this proceeding. However, the trustee contends that §§ 547(c)(2)(B) & (C) remain unfulfilled and that the June and July payments to Strick Lease should be avoided.

The Eighth Circuit Court of Appeals recently has discussed § 547(c)(2) in Lovett v. St. Johnsbury Trucking, 931 F.2d 494 (8th Cir. 1991). In Lovett, the Eighth Circuit observed:

"[T]here is no precise legal test which can be applied" in determining whether payments by the debtor during the 90-day period were "made in the ordinary course of business"; "rather, th[e] court must engage in a 'peculiarly factual' analysis." In Re Fulghum Construction Corp., 872 F.2d 739, 743 (6th Cir. 1989) (quoting In Re First Software Corp., 81 B.R. 211, 213 (Bankr.D.Mass. 1988)). "[T]he cornerstone of this element of a preference defense is that the creditor needs to demonstrate some consistency with other business transactions between the debtor and the creditor." In Re Magic Circle Energy Corp., 64 B.R. 269, 272 (Bankr.W.D.Okla.1986) (quoted with approval in WJM, Inc. v. Massachusetts Dept. of Public Welfare, 840 F.2d 996, 1011 (1st Cir.1988)). In the present case, the analysis focuses on the time within which the debtor ordinarily

paid the creditor's invoices, and whether the timing of the payments during the 90-day period reflected "some consistency" with that practice. 931 F.2d at 497-98. This Court will use the guidelines provided above in Lovett to resolve the dispute in this matter. Applying these standards to the two payments in dispute in this matter, the Court reaches a different result with respect to each payment.

This Court finds that the payment made by debtor to Strick Lease on June 23, 1989, was a payment made in the ordinary course of business. This Court, like the court in Lovett, finds the ordinary course of business by looking at the payments for the twelve months preceding the ninety day period for preferences. See Lovett, 931 F.2d at 498 ("the twelve month period is an appropriate standard for determining the ordinary course of business between the parties"). This Court believes that looking to the prior twelve month period makes the most sense in this case as it is the most reasonable reflection of what had become ordinary between the parties.

Here, the payment period for the last twelve months of the relationship between the debtor and Strick Lease demonstrates that late payments were the norm. From July, 1988, to December, 1988, the time from invoice by Strick Lease to payment by debtor lengthened to approximately 60 days. Strick Lease accepted all of these payments. From January, 1989, to July, 1989, when the last invoice was paid on July 20, 1989, the time from the date of invoice from Strick Lease to payment by the debtor lengthened to approximately 90 days. Again, Strick Lease accepted all payments during that time. The debtor made the June 23, 1989, payment 96

days after the invoice was sent from Strick Lease.

This Court believes that the June payment "was sufficiently consistent with the payment times during the prior twelve months." Lovett, 931 F.2d at 498. In this case, like Lovett, the debtor "significantly and substantially delayed considerably beyond the 30 days specified in the contract, and . . . this practice continued during the [preference period]." 931 F.2d at 498. Moreover, like Lovett, the parties here appeared to have adopted this "extra contractual practice that [became] the ordinary course of business between them." Id. at 498-99 (citations omitted). "The new agreement" between the parties which modified this course of dealing did not take effect until after this June 23, 1989, payment.

The trustee argues, however, even if the payment made in June could be deemed to have been "made in the ordinary course of business or financial affairs of the debtor and the transferee" under § 547(c)(2)(B), Strick Lease has presented no evidence to satisfy § 547(c)(2)(C). That subsection states that the transfer in question must have been made "according to ordinary business terms." The Lovett decision discussed a similar concern raised by the trustee in that case. The court stated that payments made during the 90 day period:

were made "according to ordinary business terms" because the manner, form, and timing of these payments were consistent with the practice both parties followed previously . . . the fact that most of the payments were not made within 30 days is . . . not inconsistent with their having been "made according to ordinary business terms."

Lovett, 931 F.2d at 499. The same reasoning is applicable in this case. Hence, the Court finds that § 547(c)(2)(C) has been fulfilled with regard to the June payment.

The trustee further contends that Strick Lease needed to provide some evidence of "common" practices in the trucking industry in order to fulfill this requirement. This Court does not believe that the Lovett analysis requires any such showing. See Lovett, 931 F.2d at 499. Hence, Strick Lease has shown that the payment it received from the debtor was in the ordinary course of business and cannot be avoided as a preferential transfer.

The July payment, however, is a different situation. The Court concludes that payment was not in the ordinary course of business. The Court agrees that this July payment qualifies under the "twelve month test" as being in the ordinary time of payments. However, this payment cannot be considered to be in the ordinary course of business because it was made pursuant to a "new agreement" between the parties. This new agreement was finalized between the parties on June 28, 1989, and required new terms of repayment completely unrelated to and departing from the ordinary course of dealings between the parties in the last twelve months. Specifically, the new arrangement was that the debtor would attempt to bring its account current by paying one-half of a monthly installment each 11 days until it had brought the account current. While the Lovett court noted that accelerating payments does not change ordinary course of dealings between the parties, this new arrangement went beyond merely accelerating the rate of payment.

This Court believes that under the plain meaning of § 547(c)(2) a transfer in the ordinary course of business during the preference period must be sufficiently similar to a transfer at other times in the parties' relationship. See Lovett, 931 F.2d at 498. Here, this new arrangement between the debtor and Strick Lease is within the 90 day preference period and does not provide a substantially similar method, or even similar at all, to the prior course of dealings on payment invoices.

Under this new agreement signed June 28, 1989, debtor was to pay every 11 days one-half the monthly invoice amount. The first payment was due on July 10 and the second payment was due on July 21, 1989. Iowa Steel missed the first payment. The testimony presented convinces this Court that Strick Lease did not simply sit back and wait for debtor's payment to come. Strick Lease was not complying with its previous practice of waiting up to 60 days after the payment was due. Instead, Strick Lease got on the phone and encouraged the debtor to make the payment as soon as possible. Concurrently with that activity, Strick Lease prepared a default notice which was sent to the debtor on July 19, 1989. The notice was a demand for payment of the account in full and a notice of demand for return of all the equipment covered by the agreement without delay in accordance with the terms of the new agreement. Strick Lease had never reacted like this to prior late payments. In short, Strick Lease treated any payments to be received under this new agreement very differently than they had previously treated payments from the debtor. It is plain to this Court that


this July payment was to be made under this new arrangement and that this new arrangement is not sufficiently similar to the previously documented course of dealing between the parties. The Court believes that, unlike Lovett, there is present here "the kind of 'economic pressure to obtain payment as soon as possible' that led the court [in In re Seawinds, Ltd., 888 F.2d 640, 641 (9th Cir. 1989)] to hold that payments were not made within the ordinary course of business ." Lovett, 931 F.2d at 499. This Court must conclude that the payment from Iowa Steel to Strick Lease in July, 1989, was not in the ordinary course of the debtor's business and that the trustee may avoid this payment under § 547(b).

ORDER

IT IS THEREFORE ORDERED that the trustee's complaint to avoid preferential transfers is granted with regard to the July payment but is denied with respect to the June payment.

IT IS FURTHER ORDERED that Strick Lease, Inc., will return \$9,706.30 to the trustee as the recipient on behalf of the estate.

DONE AND ORDERED this 25th day of June, 1991.


MICHAEL J. MELLOY
Chief Bankruptcy Judge

Copies to: (w/judgment)
Eells & Peiffer, P.C.,
Attys for Plaintiff;
Matthew G. Novak,
Atty for Defendant;

U.S. Trustee;
this June 28, 1991
Anita W. ...
Deputy Clerk
P.O. Box 74890
Cedar Rapids, Iowa 52407

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

JUL 01 1991

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

BARBARA A. EVERLY, CLERK

IN RE:)	
	)	Chapter 7
IOWA STEEL EXPRESS, INC.	)	Bankruptcy No. L-89-01410 C
)	
Debtor.)	
)	
)	
MICHAEL C. DUNBAR, Trustee,	)	Adversary No. L-90-0183C
)	
Plaintiff,)	
	)	MOTION TO AMEND FINDINGS
vs.	)	AND ALTER OR AMEND JUDGMENT
)	
STRICK LEASE, INC.)	
)	
Defendant.)	

Defendant, Strick Lease, Inc., pursuant to Federal Rules of Civil Procedure 52(b) and 59(e) and Bankruptcy Rules 7052 and 9023, for its Motion to Amend Findings and Alter or Amend Judgment, states:

1. On June 25, 1991, the court entered judgment on the Trustee's Complaint to set aside as a preferential transfer a \$9,706.30 payment made on July 20, 1989.

2. Federal Rule of Civil Procedure 52(b) provides that upon motion the court may amend its findings or make additional findings and may amend the judgment accordingly. Federal Rule of Civil Procedure 59(e) further provides that a motion to alter or amend judgment may be made not later than ten days after entry of the judgment.

3. In the court's Proposed Findings of Fact, paragraph 4, the court correctly found that an agreement debtor reached with Strick Lease was never put into effect and that the payment made on July 20, 1989 was the monthly payment for the invoice dated April 28, 1989.

4. The testimony of former Iowa Steel employees Scott Larson and Kim Snitker supports the court's finding. Both testified that the "new agreement" was never put into effect. The actions of Strick Lease, Inc. are also consistent with the court's finding. The evidence revealed Strick did not take any efforts to repossess its collateral despite the fact no payments (which cleared) were made after July 20, 1989.

5. On page 8 of its Ruling, the Court stated that the July payment was made pursuant to the "new agreement" between the parties and therefore found the payment was not in the ordinary course of business. This conclusion is contrary to the specific finding made by the court in paragraph 4 and is contrary to the evidence.

6. The default notice sent by Strick Lease on July 19, 1989, was not received by Iowa Steel at the time the payment of July 20, 1989 was made. In fact, Scott Larson testified he was not even aware of the July 19, 1989 default notice as the notice was addressed to Richard Smith. Kim Snitker signed the July 20, 1989 check and was not aware of the

default notice. She considered the payment to be the normal monthly payment.

7. The court apparently confused the July 20 check with a later check sent by Iowa Steel on July 25, 1989. Iowa Steel sent a check on July 25, 1989 to Strick in the amount of \$19,168.90, which was returned for insufficient funds. This check was sent in response to the default notice. The default notice informed Iowa Steel that it was behind in payments in the amount of \$28,875.20. (\$28,875.20 - monthly payment of \$9,706.30 = \$19,168.90).

8. The testimony of Scott Larson and Kim Snitker was that both the June 23, 1989 and July 20, 1989 payments were made in the same manner. The checks were written, given to George Smith for his approval, and then sent to Strick.

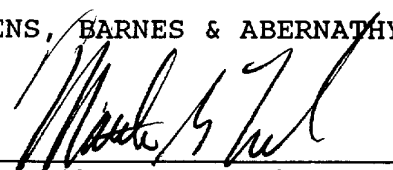
9. Defendant respectfully submits that the court's Ruling and Judgment should be amended to find that the payment made on July 20, 1989 was in the ordinary course of business and not pursuant to any "new agreement." Defendant respectfully submits that the evidence showed the attempted payment of July 25, 1989 was the first attempt by Iowa Steel to bring its account current.

WHEREFORE, defendant respectfully prays that the court's findings should be altered to reflect that the payment made on July 20, 1989 was in the ordinary course of business and that the attempted payment by Iowa Steel on

July 25, 1989 was the first attempt by Iowa Steel to bring its account current and amend its judgment accordingly to deny the Trustee's Complaint to set aside as a preferential transfer the payment of \$9,706.30 made on July 20, 1989.

PICKENS, BARNES & ABERNATHY

By


Matthew G. Novak
Tenth Floor American Building
P. O. Box 74170
Cedar Rapids, IA 52407-4170
PH: (319) 366-7621
FAX: (319) 366-3158

ATTORNEYS FOR DEFENDANT

Copy to:

Dennis Currell
Suite 475
Brenton Financial Center
Cedar Rapids, IA 52401

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Cedar Rapids, Iowa, on the 1st day of July, 1991.



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filing attorney
on date filed **RH**

JUL 01 1991

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

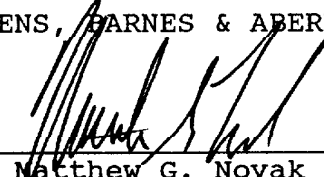
BARBARA A. EVERLY, CLERK

IN RE:)
IOWA STEEL EXPRESS, INC.) Chapter 7
Debtor.) Bankruptcy No. L-89-01410 C
_____))
MICHAEL C. DUNBAR, Trustee,) Adversary No. L-90-0183C
Plaintiff,)
vs.) REQUEST FOR ORAL ARGUMENT
STRICK LEASE, INC.)
Defendant.)

Defendant, Strick Lease, Inc., hereby requests oral argument on its Motion to Amend Findings and Alter or Amend Judgment.

PICKENS, BARNES & ABERNATHY

By


Matthew G. Novak
Tenth Floor American Building
P. O. Box 74170
Cedar Rapids, IA 52407-4170
PH: (319) 366-7621
FAX: (319) 366-3158

ATTORNEYS FOR DEFENDANT

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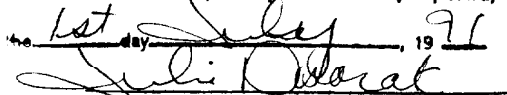
Dennis Currell
Suite 475
Brenton Financial Center
Cedar Rapids, IA 52401

Copy handed to
filing attorney
on date filed **RN**

Recorded:
Vol. III
page 35

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Cedar Rapids, Iowa, on

the 1st day of July, 19 91


FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

JUL 03 1991

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

BARBARA A. EVERLY, CLERK

IN RE:)	
)	
IOWA STEEL EXPRESS, INC.,	)	Bankruptcy No. L-89-01410C
)	
Debtor.)	
-----)	
)	
MICHAEL C. DUNBAR, Trustee,	)	Adversary No. L-90-0183C
)	
Plaintiff,)	
)	
vs.)	
)	
STRICK LEASE, INC.,)	
)	
Defendant.)	

RESISTANCE TO MOTION TO AMEND FINDINGS AND
AND ALTER OR AMEND JUDGMENT

COMES NOW the Trustee by and through counsel, Dennis Currell, of Eells & Peiffer, P.C., and resists the Motion to Amend Findings and Alter or Amend Judgment filed by Defendant, Strick Lease, and states:

1. Trustee agrees with contentions contained in paragraphs 1 and 2 of Defendant's Motion.

2. Trustee agrees with the Court's finding that a new agreement was entered into by and between Debtor Iowa Steel Express, Inc. and Defendant Strick Lease, Inc.

3. The record amply supports the finding by the Court as to the existence of the new agreement and consideration paid in the form of the June 1989 payment by Debtor to Strick Lease as the basis for and consideration for deferring default by Strick in

exchange for a promise that payments to take place in July pursuant to the schedule set out in the June letter from Strick Lease to Iowa Steel, Exhibit "D."

4. Defendant erroneously contends the Court stated that the new lease agreement was never, "put into effect"; the Court in essence said that as soon after the agreement was made, Iowa Steel Express breached it by not making the July payment, a fact which is evident due to the immediate default declaration by Strick Lease after the July 10 payment date and prior to the next payment due on July 20. Obviously, if the agreement had not been "put into effect," there would be no declaration of default by Strick Lease premised upon the breach and nonpayment of the July 10 payment specifically referenced in the notice of breach.

5. The contentions advanced by Defendant are just not supported by the record when it is examined as a whole.

6. Trustee submits to the Court that the testimony of Kim Snitker is of little weight and little value since she had absolutely no dealings whatsoever in any of the negotiations between Strick Lease and Iowa Steel Express concerning the business relationship between those two respective entities; nor was she aware of the contract negotiations in June of 1989.

7. When reviewed in its entirety, the record clearly supports the conclusions and findings by the Court that there was a new agreement entered into by and between Strick Lease and Iowa Steel Express in June; that a payment schedule was set out for July; that Iowa Steel Express breached the new terms and conditions by not making its first payment due in July; and that Defendant

Strick Lease considered the nonpayment to be a material breach and provided notice of default on July 19, one day prior to the second installment payment due under the agreement; such that this Court should deny the motion to amend findings and alter or amend the judgment in its entirety.

WHEREFORE, Plaintiff prays for an Order of Court which at hearing upon Defendant's Motion finds and determines that said Motion to amend the findings and alter or amend the judgment as prayed for by Defendant should be overruled in its entirety; for such other and further relief as the Court may deem to be just and necessary in the premises including taxing the costs of said hearing to the Defendant; and for such other and further relief as the Court may deem to be just and appropriate in the premises.

Respectfully submitted,

EELLS & PEIFFER, P.C.

By 

Dennis Currell
465 Brenton Financial Center
150 First Avenue NE
Cedar Rapids, Iowa 52401
Telephone: (319) 363-1641
ATTORNEY FOR THE PLAINTIFF

Copy To:
Matthew G. Novak
Attorney at Law
1010 American Building
Cedar Rapids, Iowa 52401

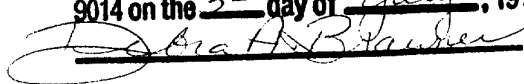
United States Trustee
Suite 675, The Center
425 - 2nd Street SE, Box 47
Cedar Rapids, Iowa 52401

Michael C. Dunbar
Attorney at Law
P.O. Box 1377
Waterloo, Iowa 50704

Copy handed to
filing attorney
on date filed **RH**

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that a copy of this document was served upon, mailed, or delivered to counsel of record, debtor, and other parties of interest in compliance with Bankruptcy Rules 7004 and 9014 on the 3rd day of July, 19 91.



Recorded: Vol. III
page 35

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

JUL 05 1991

BARBARA A. EVERLY, CLERK

IN RE:)	
)	
IOWA STEEL EXPRESS, INC.,	)	Bankruptcy No. L-89-01410C
)	
Debtor.)	
-----)	
)	
MICHAEL C. DUNBAR, Trustee,	)	Adversary No. L-90-0183C
)	
Plaintiff,)	
)	
vs.)	
)	
STRICK LEASE, INC.,)	
)	
Defendant.)	

**PLAINTIFF'S MOTION FOR AMENDED
FINDINGS OF FACT, JUDGMENT, AND DECREE**

COMES NOW the Trustee and in support of his Motion for Amendment to the Findings of Fact, Judgment, and Decree, states:

1. This Motion is made pursuant to United States Bankruptcy Court Rule 7052(b) and Rule 52 of the Federal Rules of Civil Procedure.

2. That the proposed Findings should be amended by including the following findings:

a. That the parties commenced their business relationship in March of 1987.

b. That the original terms required Strick Lease to be paid 10 days net and that the parties never abided by those terms.

c. That the actual practice of the parties was to make payments on invoices within 30 days for more than 70 percent of their entire business relationship.

d. That the industry standard was payment on invoices within 30 days.

e. That the June 1989 payment was beyond the 30 day average established by more than 70 percent of the entire dealings between the parties; that it was beyond the 50 day average for the entire business relationship between the parties; and it was beyond the industry standard.

f. That the June 1989 payment was consideration for and part of a new agreement negotiated between Strick Lease and Iowa Steel Express, and constituted the "good faith payment" that was necessary to maintain the business relationship between Strick Lease and Iowa Steel Express.

g. That the June 1989 payment was a preferential transfer pursuant to Section 11 U.S.C. Section 547.

h. That payments in excess of 60 days were unacceptable to Strick Lease and Strick Lease sought to correct or to change the payment practices of Iowa Steel Express by shortening the time between invoice and payment in June of 1989 when they negotiated a plan with Scott Larson of Iowa Steel Express. The purpose was to catch up Iowa Steel Express' delinquencies such that their payments were within 45 days of their receipt of invoice.

i. That Strick Lease had failed in its burden to present sufficient evidence to rebut the presumptions that the June 1989 payment was a preferential transfer.

j. That the overall average turnaround time between invoice and payment on all 37 invoices between Iowa Steel Express, Inc., and Strick Lease, Inc., averaged 50.41 days.

k. That the first 28 invoices encompass 76 percent of all of the invoices between the parties. A period of almost 1-1/2 years out of a 2-year course of dealing between the parties between March of 1987 and July of 1989.

l. That Defendant's Exhibit "C" shows an average of 75.59 days between invoice and payment as the "ordinary course of business" between the parties from September 1988 through July 1989; that the last two payments, June 28, 1989 and July 21, 1989, average 90 days from date of invoice to payment.

3. That the conclusions of law should be amended as follows:

a. The decision by the Eighth Circuit Court of Appeals in Lovett v. St. Johnsbury Trucking did not definitively determine the requirement of additional proof to satisfy Section 547(c)(2)(C) within the Eighth Circuit. In Lovett, the Eighth Circuit decided the case based upon the actual dealings between the respective parties. It was unnecessary for the Court to get to the analysis and to determine whether further additional separate evidence was required under Section 547(c)(2)(C). Lovett further indicates that such evidence was presented on behalf of St. Johnsbury Trucking and that said evidence was the only evidence presented if such evidence was necessary.

The ONLY evidence in the record in this case is from Scott Larson to the effect the industry-wide standard was payment net on 30 days. Like the Court in Lovett, this Court need not reach the analysis of the necessity of industry-wide practice given the previous analysis of the dealings between the parties. However, in the event this Court determines such an analysis necessary, the ONLY evidence presented and in the record is from Scott Larson that the industry standard was 30 days.

There is absolutely no evidence in the record from Strick Lease that the actions of Strick Lease in negotiating and accepting the June payment and the payment in July following negotiation of the new agreement in June constitutes an acceptable industry-wide standard.

b. That the payments made by Iowa Steel Express, Inc., to Strick Lease in June and July were payments made after Debtor was insolvent and as such are presumptively non-ordinary. In Matter of Xonics Imaging, Inc., 837 F.2d 767 (7th Cir. 1988).

4. That the Findings of Fact, Conclusions of Law, and Judgment in the above matter should be changed, amended, and corrected in conformity with the proposed amendments contained in this Motion.

WHEREFORE, Plaintiff moves this Court for an Order of Court which amends the Findings of Fact, Conclusions of Law, Judgment, and Decree in conformity with the requests contained in this

Motion; and for such other and further relief as the Court deems to be just, necessary, and equitable in the premises.

Respectfully submitted,

EELLS & PEIFFER, P.C.

By 

Dennis Currell
465 Brenton Financial Center
150 First Avenue NE
Cedar Rapids, Iowa 52401
Telephone: (319) 363-1641
ATTORNEY FOR THE PLAINTIFF

Copy To:
Matthew G. Novak
Attorney at Law
1010 American Building
Cedar Rapids, Iowa 52401

United States Trustee
Suite 675, The Center
425 - 2nd Street SE, Box 47
Cedar Rapids, Iowa 52401

Michael C. Dunbar
Attorney at Law
P.O. Box 1377
Waterloo, Iowa 50704

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that a copy of this document was served upon, mailed, or delivered to counsel of record, debtor, and other parties of interest in compliance with Bankruptcy Rules 7004 and 9014 on the 5 day of July, 1991



Copy handed to
filing attorney
on date filed RH

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

JUL - 9 1991

BARBARA A. EVERLY, CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE: CHAPTER 7
BANKRUPTCY NO.

IOWA STEEL EXPRESS, INC.
Debtor(s), L89-01410C

MICHAEL C. DUNBAR, Trustee,
Plaintiff(s), ADVERSARY NO. L90-0183C
vs

STRICK LEASE, INC.,
Defendant(s).

Notice Setting Oral Argument re:
Motions to Amend Findings and Alter or
Amend Judgment, and Resistance, thereto;

TO: Matthew Novak, Attorney for Defendant;
Dennis Currell, Attorney for Plaintiff;
U.S. Trustee;

NOTICE IS GIVEN the above matters will come before the Court for
hearing on:

August 6, 1991 at 11:00 A.M., in the

Bankruptcy Court Room, 800 The CENTER, 425 Second St. S.E.,
CEDAR RAPIDS, IOWA.

DATED July 9, 1991

BARBARA A. EVERLY
Clerk, Bankruptcy Court

by: *Michael D. Goley*
Deputy Clerk
PO Box 74890
Cedar Rapids, IA 52407

Copies mailed to
parties above-named
this July 9, 1991

Recorded: Vol III
Page 35

JUL 22 1991

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

BARBARA A. EVERLY, CLERK

IN RE:)	
	)	Chapter 7
IOWA STEEL EXPRESS, INC.	)	Bankruptcy No. L-89-01410 C
)	
Debtor.)	
)	
)	
MICHAEL C. DUNBAR, Trustee,	)	Adversary No. L-90-0183C
)	
Plaintiff,)	
	)	MOTION TO RESET HEARING
vs.)	
)	
STRICK LEASE, INC.)	
)	
Defendant.)	

Defendant, Strick Lease, Inc., for its Motion to Reset Hearing, states:

1. Oral argument on Motions to Amend Findings and Alter or Amend Judgment is set for August 6, 1991 at 11:00 a.m.

2. Counsel for Strick Lease, Inc. has a family vacation scheduled for the week of August 5, 1991, and requests that oral argument be reset.

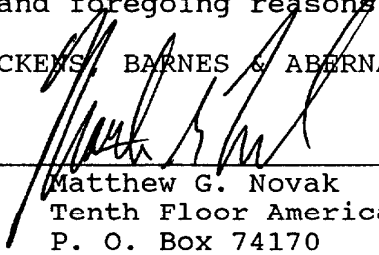
3. Counsel for defendant has conferred with other attorneys in the office familiar with the file and conflicts in scheduling would prevent someone else from handling the hearing.

4. No prejudice will result to plaintiff. Counsel for defendant contacted plaintiff's counsel who indicated that they would not agree to a continuance.

WHEREFORE, defendant Strick Lease, Inc. prays that oral argument on the Motions to Amend Findings and Alter or Amend Judgment be reset for the above and foregoing reasons.

PICKENS, BARNES & ABERNATHY

By


Matthew G. Novak
Tenth Floor American Building
P. O. Box 74170
Cedar Rapids, IA 52407-4170
PH: (319) 366-7621
FAX: (319) 366-3158

ATTORNEYS FOR DEFENDANT

Copy to:

Dennis Currell
Suite 475
Brenton Financial Center
Cedar Rapids, IA 52401

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Cedar Rapids, Iowa, on the 2nd day of July, 1991.



Copy handed to
filing attorney
on date filed

RH

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

IOWA STEEL EXPRESS, INC.,

Debtor.

MICHAEL D. DUNBAR, Trustee, BARBARA A. EVERLY, CLERK, ADVERSARY NO.

Plaintiff,

v.

STRICK LEASE, INC.,

Defendant.

ORDER CONTINUING AND RESETTING HEARING


The Court has considered the motion to continue the hearing scheduled for August 6, 1991, in this matter. For good cause shown, the motion to continue should be granted.

IT IS THEREFORE ORDERED the motion to continue the hearing on defendant's motion to amend findings and alter or amend judgment and plaintiff's motion for amended findings of fact, judgment, and decree is granted. The continued hearing on those motions will be held on:

AUGUST 14, 1991 at 10:00 A.M.

in the Bankruptcy Courtroom, 800 The Center, 425 Second St. S.E.,
CEDAR RAPIDS, Iowa.

DONE AND ORDERED this 26th day of July, 1991.


MICHAEL J. MELLOY
Chief Bankruptcy Judge

Recorded: Vol III
page 35

Copies to:
Eells & Peiffer, P.C.,
Attys for Plaintiff;
Matthew Novak,
Atty for Defendant;
U.S. Trustee;
this July 26, 1991

Michael A. Golay
Deputy Clerk, U.S. Bankruptcy Court
P.O. Box 74890
Cedar Rapids, Iowa 52407

UNITED STATES BANKRUPTCY COURT - NORTHERN DISTRICT OF IOWA
PROCEEDING MEMO

DATE: 8/14/91 Case No. L89-00410C Chapter 7 At No. L90-0183C
RE: Dunbar v. Strick Lease (Iowa Steel) Contested No. _____

APPEARANCES: For Plaintiff/Debtor Dennis Cunell
For Defendant/Movant/Creditor Matthew Novak

J.S. TRUSTEE _____ CASE TRUSTEE _____

NATURE OF PROCEEDING:

AUG 16 1991

☐ Motion to Use Cash Collateral ☐ Objection to Exemptions/Lien Avoidance
☐ Disclosure Statement ☐ Pretrial/Scheduling Conference
☐ Confirmation of Plan ☐ Dischargeability/Discharge Complaint
☐ Motion to Dismiss ☐ Objection to Final Report/Claims Report
☐ Status Conference ☐ Motion to Assume/Reject
☐ Trial ☒ Other Cont'd hearing on Motion to Amend
OUTCOME: Findings and Judgment

☐ Settled: Settlement documents to be submitted within 30 days or matter will be dismissed pursuant to Local Rule 13(D).

☐ Other: _____
ORDERS:

☒ Taken Under Advisement _____

☐ Briefs Due _____

☐ Judgment Entered by the Court pursuant to F.R.B.P. 9021:

Copy to:

Eells & Peiffer, for Trustee;
Matthew Novak, for defendant;
this August 16, 1991

U.S. Trustee mg

IT IS SO ORDERED

Matthew Novak
U.S. Bankruptcy Judge

Recorded: Vol. III
page 35

L.C.

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)	
)	
IOWA STEEL EXPRESS	)	CHAPTER 7
	)	BANKRUPTCY NO.
DEBTOR,)	
	)	L-89-01410C
)	
MICHAEL C. DUNBAR, TRUSTEE	)	ADVERSARY NO.
)	
Plaintiff,	)	L-90-0183C
)	
v.)	
)	
STRICK LEASE, INC.,)	
)	
Defendant.)	

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

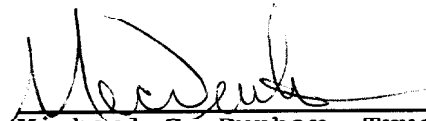
FEB 11 1993

BARBARA A. EVERLY, CLERK

RECEIPT AND SATISFACTION

FOR VALUE RECEIVED, Michael C. Dunbar, Trustee in the above
entitled matter, does hereby receipt and satisfy all sums due in the
above action from the Defendant, Strick Lease, Inc.

Dated: February 10, 1993, at Waterloo, Iowa.


Michael C. Dunbar, Trustee 1321

Recorded: Vol. III
page 357